

1989), *rev. denied*, FCC 90-109 (released April 12, 1990), the Review Board found that a spouse who participates in the preparation of the application, is proposed to participate in any station activities and assists in funding of the proposed station as a contributor, lender or loan guarantor will be held to have a "mutual ownership stake", and will be counted as an unintegrated owner of one-half of the applicant spouse's interest.

David Bowen is such a spouse. He has as much, if not more, at stake in the success of the Rivertown venture as does Ellen Bowen. David Bowen agreed to loan \$15,000 toward the construction and operation of the Eldon station, whereas his wife contributed only the nominal amount of \$45 to Rivertown and has no further financial obligation. Even this small amount came from joint funds. Mr. Bowen (not Mrs. Bowen) is a joint owner with David Brown of improved real estate in Eldon which will serve as Brown's residence and Rivertown's proposed broadcast studios. (TR 89) Mr. Bowen has invested time and effort in remodeling this property and will be involved in the construction of the Eldon station. (TR 68, 70, 94) In addition, he was present with Ellen at most of her meetings with David Brown and attended Ellen Bowen's hearing testimony in this proceeding. (TR 50, 67).

These facts lead to the conclusion that Ellen Bowen's 45% interest in Rivertown is a marital asset in which David Bowen has a "mutual ownership stake." Consequently, Ellen Bowen's

ownership interest must be halved to 22.5%. Even were she to receive integration credit, Rivertown could receive none for Mr. Bowen's 22.5% interest in Rivertown. It would thus receive 77.5% integration credit compared to Sample's 100%. This is a decisionally significant difference. Kennelwood Broadcasting Co., 6 FCC Rcd 1350 (Rev. Bd. 1991) (12.5% differential in integration credit cannot be overcome by qualitative attributes).

3. Whether the ID correctly found that Rivertown merited no diversification demerit.

At paragraph 98, the ID found Rivertown to have no "chargeable media interests" for diversification purposes. This conclusion is in error. David Brown became the general manager of stations WAIK/WGBQ Galesburg, Illinois, on May 6, 1991.⁴ Rivertown first reported this managerial employment to the Commission on July 7, 1992, over two months after the employment commenced and more than four months after the last day to file amendments-as-of-right in the Eldon proceeding, March 2, 1992. ("TR" 88)

Under Section 1.65 of the rules, mass media interests acquired by an applicant after the amendment-as-of-right date must be reported to the Commission within 30 days of the acquisition. The interest will be attributed for diver-

⁴ See TR Page 84 for Brown's oral testimony on this subject. An upper-level management position is an attributable media interest. See, e.g., Reexamination of Cross Interest Policy 4 FCC Rcd 2208, 2214 (1989).

sification purposes unless the applicant files a "contemporaneous" pledge to divest that interest if its application is granted. Contemporaneous is defined as being within the 30 day period set forth in Section 1.65. Women's Broadcasting Coalition, Inc., 59 RR 2d 730 (1986), Lion's Share Broadcasting, FCC 93R-64, released December 6, 1993 (Rev. Bd. 1993). Sample brought this matter to the Commission's attention via a pre-designation pleading which, inter alia, conditionally requested that a reporting issue be added against Rivertown. The Hearing Designation Order (Eldon, Iowa) 8 FCC Rcd 469, ¶¶ 3-4, n. 2 (Mass Med. Bur. 1993) ("HDO"), denied Sample's request for a reporting issue and accepted Brown's amendment. The HDO continued that "an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed."

While agreeing that Rivertown failed to timely report Brown's managerial interest, the ALJ concluded wrongly that denial of the reporting issue precluded assessing a diversification demerit against Rivertown. As noted in the Commission's Policy Statement of Comparative Broadcast Hearings, 1 FCC 2d 393, n. 5 (1965) "significant managerial positions in stations and other media within and without [prescribed overlap areas] will be considered [for diversification purposes] when held by persons with any ownership or significant managerial interest in an applicant." In accordance

with the Policy Statement and Commission precedent, Rivertown's failure to submit a contemporaneous divestiture commitment with respect to Brown's general managership of WAIK/WGBQ must result in a slight diversification demerit to Rivertown. Thomas and Essie Collins, 93 FCC 2d 467 (Rev. Bd. 1983); J.T. Parker Broadcasting Corp., 5 FCC Rcd 4651 (1990).

4. Whether Rivertown merits "substantial preference for the broadcast experience of its principals."

At paragraph 113, the ID awarded Rivertown "substantial preference" over Sample for broadcast experience. This was error. David Brown, a 55% principal of Rivertown, has roughly 14 years of recent broadcast experience; Ellen Bowen, a putative 45% principal, was in broadcasting as an employee only from 1986 to 1989. Carmela Sample-Day, Sample's sole general partner, has roughly 11 years recent broadcast experience.

Bowen's small amount of broadcast experience does not compare to Sample-Day's. Sample's 100% credit for Ms. Sample-Day's 11 years experience is comparatively superior to Rivertown's 55% credit for Mr. Brown's 14 years broadcast experience.

IV. CONCLUSIONS

Sample's application is comparatively superior and its grant must be sustained. Basic qualifications hearing issues are warranted against Rivertown. In addition, Rivertown should receive a slight diversification demerit for David

Brown, no integration credit for Ellen Bowen,⁵ and Sample should be credited with superior broadcast experience.

Respectfully Submitted,

SAMPLE BROADCASTING COMPANY, L.P.

By 

John S. Neely
Its Attorney

December 10, 1993

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

⁵ Or at most 22.5% credit to reflect David Bowen's attributable interest in the applicant.

CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of December, 1993, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

Norman Goldstein, Esq.
Mass Media Bureau, Hearing Branch
Federal Communications Commission
Washington, DC 20554

Donald E. Ward, Esq.
Law Offices of Donald E. Ward, P.C.
1201 Pennsylvania Avenue, NW
Fourth Floor
Washington, DC 20004

Robin Queen